

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 36

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-2401, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 33-2402, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS; AMENDING SECTION 33-2403, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REGISTRATION OF PROPRIETARY SCHOOLS AND TO REVISE PROVISIONS RELATING TO EXEMPTIONS; AMENDING SECTION 33-2404, IDAHO CODE, TO PROVIDE THAT A STUDENT MAY BRING AN ACTION; AMENDING SECTION 33-2406, IDAHO CODE, TO PROVIDE THAT THE BOARD MAY PERMIT THE DIRECTOR TO ACCEPT FROM CERTAIN PROPRIETARY SCHOOLS CERTAIN BONDS AND TO PROVIDE THAT THE DIRECTOR MAY SUBMIT A DEMAND UPON THE SURETY ON THE BOND ON BEHALF OF A STUDENT OR STUDENTS IN CERTAIN SITUATIONS; AMENDING CHAPTER 24, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2407, IDAHO CODE, TO PROVIDE FOR POWERS AND DUTIES OF THE DIRECTOR; AMENDING CHAPTER 24, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2408, IDAHO CODE, TO PROVIDE FOR REMEDIES, TO PROVIDE FOR A HEARING, TO PROVIDE FOR CIVIL PENALTIES AND TO PROVIDE THAT A COURT MAY ENTER AN ORDER TO RECOVER COSTS; AND AMENDING SECTION 33-2409, IDAHO CODE, TO PROVIDE FOR CRIMINAL PENALTIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-2401, Idaho Code, be, and the same is hereby amended to read as follows:

33-2401. DEFINITIONS. For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

(1) "Accredited" means that a postsecondary educational institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board.

(2) "Agent" means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school.

(3) "Agent's certificate of identification" means a nontransferable written document issued to an agent by the proprietary school that the agent represents.

(4) "Board" means the state board of education.

(5) "Course" means instruction imparted in a series of lessons or class meetings to meet an educational objective.

(6) "Course or courses of study" means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise.

(7) "Degree" means any written or any academic title which contains, in any language, the word "associate," "bachelor," "baccalaureate," "master" or "doctor," or any abbreviation thereof, and which indicates or represents, or which is intended to indicate or represent, that the person named thereon,

1 in the case of any writing, or the person it is awarded thereto, in the case  
 2 of any academic title, is learned in or has satisfactorily completed a pre-  
 3 scribed course of study in a particular field or that the person has demon-  
 4 strated proficiency in any field of endeavor as a result of formal prepara-  
 5 tion or training.

6 (8) "Director" means the executive officer of the state board of educa-  
 7 tion or his designee.

8 (9) "Person" means an individual, sole proprietorship, partnership,  
 9 corporation or other association of individuals, however organized.

10 (10) "Postsecondary educational institution" means an individual  
 11 person, or educational, business or other entity, whether legally consti-  
 12 tuted or otherwise, which maintains a presence within, or which operates or  
 13 purports to operate, from a location within the state of Idaho, and which  
 14 provides a course or courses of study that lead to a degree, or which pro-  
 15 vides, offers or sells degrees.

16 (11) "Proprietary school" means an individual person, or educational,  
 17 business or other entity, whether legally constituted or otherwise, which  
 18 maintains a presence within, or which operates or purports to operate, from  
 19 a location within the state of Idaho and which conducts, provides, offers or  
 20 sells a course or courses of study, but which does not provide, offer or sell  
 21 degrees.

22 SECTION 2. That Section 33-2402, Idaho Code, be, and the same is hereby  
 23 amended to read as follows:

24 33-2402. REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS. (1)  
 25 Unless exempted as provided herein, each postsecondary educational institu-  
 26 tion which maintains a presence within the state of Idaho, or which operates  
 27 or purports to operate from a location within the state of Idaho, shall  
 28 register annually with and hold a valid certificate of registration issued  
 29 by the ~~board~~ director. A public postsecondary educational institution or  
 30 agency supported primarily by taxation from either the state of Idaho or a  
 31 local source in Idaho shall not be required to register under this section.  
 32 The ~~board~~ director may exempt a nonprofit postsecondary educational insti-  
 33 tution from the registration requirement in accordance with standards and  
 34 criteria established in rule by the board. The ~~board~~ director may permit  
 35 a postsecondary educational institution required to register under this  
 36 section to instead register as a proprietary school under section 33-2403,  
 37 Idaho Code, in accordance with standards and criteria established in rule by  
 38 the board.

39 (2) The board shall prescribe by rule the procedure for registration,  
 40 which shall include, but is not limited to, a description of each degree,  
 41 course or courses of study, for academic credit or otherwise, that a postsec-  
 42 ondary educational institution intends to conduct, provide, offer or sell.  
 43 Such rule shall also prescribe the standards and criteria to be utilized by  
 44 the ~~board~~ director for recognition of accreditation organizations.

45 (3) The ~~board~~ director may deny the registration of a postsecondary  
 46 educational institution that does not meet accreditation requirements or  
 47 other standards and criteria established in rule by the board. The adminis-  
 48 trative procedure act, chapter 52, title 67, Idaho Code, shall apply to any  
 49 denial of registration under this section.

(4) The ~~board~~ director shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the ~~board~~ director and shall be dedicated for use by the ~~board~~ director in connection with ~~its~~ his responsibilities under this chapter.

SECTION 3. That Section 33-2403, Idaho Code, be, and the same is hereby amended to read as follows:

33-2403. REGISTRATION OF PROPRIETARY SCHOOLS. (1) Unless exempted as provided in subsection (4) of this section, each proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the ~~board or its designee~~ director.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each course or courses of study, for academic credit or otherwise, that a proprietary school intends to conduct, provide, offer or sell.

(3) The ~~board~~ director may deny the registration of a proprietary school that does not meet the standards or criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The following individuals or entities are specifically exempt from the registration provisions required by this section:

(a) An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the board.

(b) An individual or entity that offers courses recognized by the board which comply in whole or in part with the compulsory education law.

(c) An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.

(d) An individual or entity ~~which is that conducts or engages in activities that would otherwise regulated, licensed or registered with another state agency~~ require registration under chapter 24, title 33, Idaho Code, if another state agency, commission or board regulates such activities pursuant to title 54, Idaho Code.

(e) An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation.

(f) An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days and offered no more than four (4) times per year.

(g) A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

(h) An individual or entity that offers postsecondary credit through a consortium of public and private colleges and universities under the auspices of the western governors.

(i) An individual that offers flight instruction and that accepts payment for services for such training on a per-flight basis after the training occurs, or that accepts advance payment or a deposit for such training in a de minimus amount, as established by the board in rule.

(5) ~~The board~~ director shall assess an annual registration fee on each proprietary school required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the ~~board or its designee~~ director, and shall be dedicated for use by the ~~board~~ director in connection with ~~its~~ his responsibilities under this chapter.

SECTION 4. That Section 33-2404, Idaho Code, be, and the same is hereby amended to read as follows:

33-2404. AGENT'S PERMIT. (1) No individual may act as an agent of a proprietary school required to be registered under the provisions of this chapter unless that individual holds a valid agent's certificate of identification issued by the proprietary school that the agent represents.

(2) Each agent's certificate of identification shall be reissued annually by the proprietary school that the agent represents on the first day of July. If courses are solicited or sold by more than one (1) agent, a separate certificate of identification is required for each agent.

(3) The agent's certificate of identification shall consist of a pocket card and shall bear:

(a) The name and address of the agent;

(b) The name and address of the proprietary school that the agent represents;

(c) A statement that the bearer is an authorized agent of the proprietary school and may solicit students for the proprietary school.

(4) The agent shall surrender the agent's certificate of identification to the proprietary school upon termination of employment or agency relationship.

(5) An agent representing more than one (1) proprietary school shall obtain a separate agent's certificate of identification for each proprietary school represented.

(6) For every agent who will have unsupervised contact with minors, prior to issuing the agent a certificate of identification the proprietary school shall complete a criminal history check on the agent for particular criminal offenses, and in accordance with other guidelines, established in rule by the board. No agent shall be issued an agent's certificate of identification if he or she is found to have been convicted of any of the offenses identified in board rule, or if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

(7) An agent's certificate of identification shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended.

(8) The agent shall carry the agent's certificate of identification with him or her for identification purposes when engaged in the solicitation

1 of students away from the premises of the proprietary school and shall pro-  
 2 duce the agent's certificate of identification for inspection upon request.

3 (9) The issuance of an agent's certificate of identification pursuant  
 4 to this section shall not be interpreted as, and it shall be unlawful for any  
 5 individual holding any agent's certificate of identification to expressly  
 6 or impliedly represent by any means whatsoever, that the board has made any  
 7 evaluation, recognition, accreditation or endorsement of any proprietary  
 8 school or of any course of study being offered by the agent of any such pro-  
 9 prietary school. Any oral or written statement, advertisement or solici-  
 10 tation by any proprietary school or agent which refers to the board shall  
 11 state:

12 " (Name of school) is registered with the State Board of Education in ac-  
 13 cordance with Section 33-2403, Idaho Code."

14 (10) It shall be unlawful for any agent holding an agent's certificate  
 15 of identification under the provisions of this section to expressly or im-  
 16 pliedly represent, by any means whatsoever, that the issuance of the agent's  
 17 certificate of identification constitutes an assurance by the board that any  
 18 course of study being offered by the agent or proprietary school will provide  
 19 and require of the student a course of education or training necessary to  
 20 reach a professional, educational, or vocational objective, or will result  
 21 in employment or personal earning for the student, or that the board has made  
 22 any evaluation, recognition, accreditation, or endorsement of any course of  
 23 study being offered by the agent or proprietary school.

24 (11) No agent shall make any untrue or misleading statement or engage in  
 25 sales, collection, credit, or other practices of any type that are illegal,  
 26 false, deceptive, misleading or unfair.

27 (12) The proprietary school shall maintain records for five (5) years  
 28 of each application for an agent's certificate of identification, and each  
 29 issuance, denial, termination, suspension and revocation of an agent's cer-  
 30 tificate of identification.

31 (13) The proprietary school shall provide as part of the annual regis-  
 32 tration process the names and results of the criminal history check for each  
 33 agent to whom it has issued a certificate of identification. The criminal  
 34 history check will be valid for five (5) years.

35 (14) ~~The board or a~~ student may bring an action pursuant to the Idaho  
 36 rules of civil procedure for an agent's violation of the provisions of this  
 37 chapter or any rule promulgated pursuant to this chapter, or any fraud or  
 38 misrepresentation. The court shall determine which party is the "prevailing  
 39 party" and the prevailing party shall be entitled to the recovery of damages,  
 40 reasonable attorney's fees and costs both at trial and on appeal.

41 ~~(15) Any agent who violates the provisions of this section is also~~  
 42 ~~guilty of a misdemeanor punishable by imprisonment in the county jail not~~  
 43 ~~exceeding six (6) months, or by a fine not exceeding five thousand dollars~~  
 44 ~~(\$5,000), or both.~~

45 SECTION 5. That Section 33-2406, Idaho Code, be, and the same is hereby  
 46 amended to read as follows:

47 33-2406. SURETY BOND. As a condition of registration, a proprietary  
 48 school shall obtain a surety bond issued by an insurer duly authorized to  
 49 do business in this state in favor of the state of Idaho for the indemnifi-

cation of any student for any loss suffered as a result of a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of this chapter or the rules promulgated pursuant to this chapter. The term of the bond shall extend over the period of registration, and shall be in such amount as is established in rule by the board. The board may permit the director to accept from a newly registered proprietary school, for a period not to exceed five (5) years, a bond in a lesser amount that is supplemented by other financial instruments deemed acceptable by the director.

~~The board or its designee~~ director may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior written notice to the ~~board~~ director.

SECTION 6. That Chapter 24, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2407, Idaho Code, and to read as follows:

33-2407. POWERS AND DUTIES OF DIRECTOR. (1) In addition to the other duties imposed upon the director by law, the director, either personally or by designee, shall be permitted to:

(a) Administer and enforce the provisions and requirements of this chapter or rules promulgated under authority of this chapter.

(b) Conduct investigations and issue subpoenas as necessary to determine whether any person or any agent has violated or is violating any provision of this chapter or rules promulgated under authority of this chapter.

(c) Conduct examinations of the books and records of postsecondary educational institutions and proprietary schools, and investigations of any person or any agent, wherever located, and as may be necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter.

For these purposes, the director or his designated representative shall have free access to the offices and places of business or operations, books, accounts, papers, documents, other information, records, files, safes and vaults of all such persons or agents.

(2) The director may issue orders and the board may promulgate rules that, in the opinion of the director and board respectively, are necessary to execute, enforce and effectuate the purposes of this chapter.

SECTION 7. That Chapter 24, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2408, Idaho Code, and to read as follows:

1        33-2408. REMEDIES -- CIVIL PENALTIES. (1) Whenever there is suffi-  
 2        cient evidence that causes the director to conclude that any person or any  
 3        agent has engaged in or is about to engage in any act or practice constituting  
 4        a violation of any provisions of this chapter or any rule or order thereun-  
 5        der, the director may:

6        (a) Issue a cease and desist order ordering such person or agent to  
 7        cease and desist violating or continuing to violate any provision of  
 8        this chapter or any rule or order issued in accordance with this chap-  
 9        ter; or

10       (b) Apply to the district court for an order enjoining such person or  
 11       agent from violating or continuing to violate any provision of this  
 12       chapter or any rule or order and for injunctive or such other relief as  
 13       the nature of the case may require.

14       (2) Within thirty (30) days after an order is issued under subsection  
 15       (1) (a) of this section, the person or agent to whom the order is directed may  
 16       file with the director a request for a hearing on the order. The provisions  
 17       of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code,  
 18       shall apply to such hearing and to judicial review of such order.

19       (3) Upon showing in any court of competent jurisdiction that a person or  
 20       agent has violated the provisions of this chapter or rule adopted pursuant to  
 21       the provisions of this chapter, in addition to any other remedies, such court  
 22       may order the person or agent to pay civil penalties in an amount established  
 23       by the court for each violation. Such court may also enter an order entitling  
 24       the director to recover costs, which in the discretion of the court may in-  
 25       clude an amount representing reasonable attorney's fees and reimbursement  
 26       for investigative efforts.

27       SECTION 8. That Section 33-2409, Idaho Code, be, and the same is hereby  
 28       amended to read as follows:

29       33-2409. ~~ENFORCEMENT CRIMINAL PENALTIES. (1) Any violation of the~~  
 30       ~~provisions of this chapter shall be referred to the attorney general by the~~  
 31       ~~board for appropriate action including, but not limited to, injunctive re-~~  
 32       ~~lief~~ person who violates the provisions of section 33-2404, Idaho Code, is  
 33       guilty of a misdemeanor punishable by imprisonment in the county jail not  
 34       exceeding six (6) months, or by a fine not exceeding five thousand dollars  
 35       (\$5,000), or both.

36       (2) Any person who knowingly or willfully violates any other provi-  
 37       sion of this chapter is guilty of a felony punishable by imprisonment in the  
 38       county jail not exceeding twelve (12) months, or by a fine not exceeding ten  
 39       thousand dollars (\$10,000), or both.